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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 CHINA CENTRAL TELEVISION, a China company; CHINA INTERNATIONAL COMMUNICATIONS CO., LTD., a China company; TVB HOLDINGS (USA), INC., a California corporation; and DISH NETWORK L.L.C., a Colorado limited liability company, Plaintiffs, vs. CREATE NEW TECHNOLOGY (HK) LIMITED, a Hong Kong company; HUA YANG INTERNATIONAL TECHNOLOGY LIMITED, a Hong Kong company; SHENZHEN GREATVISION NETWORK TECHNOLOGY CO. LTD., a China company; CLUB TVPAD, INC., a California corporation; BENNETT WONG, and individual; ASHA MEDIA GROUP INC. d/b/a TVpad.com, a Florida corporation; AMIT BHALLA, an individual; NEWTVPAD LTD. COMPANY b/b/a NEWTVPAD.COM a/k/a TVPAD USA, a Texas corporation; LIANGZHONG ZHOU, an individual; HONGHUI CHEN d/b/a E-DIGITAL, an individual; JOHN DOE 1 d/b/a BETV; JOHN DOE 2 d/b/a YUE HAI; JOHN DOE 3 d/b/a 516; JOHN DOE 4 d/b/a HITV; JOHN DOE 5 d/b/a GANG YUE; JOHN DOE 6 d/b/a SPORT ONLINE; JOHN DOE 7 d/b/a GANG TAI WU XIA; and JOHN DOES 8-10, Defendants.

23) Case No.
24) CV 15-1869 MMM (AJWx)
25)
26) **NOTICE OF MOTION AND**
27) **MOTION FOR PRELIMINARY**
28) **INJUNCTION; MEMORANDUM**
29) **OF POINTS AND AUTHORITIES**
30)
31) [Compendium of Evidence
32) Volumes 1 through 7 and
33) {Proposed} Order filed concurrently]
34)
35) **Date:** June 8, 2015
36) **Time:** 10:00 a.m.
37) **Crtrm.:** 780
38)
39) Action Filed March 13, 2015

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on June 8, 2015 at 10:00 a.m., or as soon
 3 thereafter as the matter may be heard, in Courtroom 780 of the Honorable Margaret
 4 M. Morrow, located at 255 East Temple Street Los Angeles, California, Plaintiffs
 5 China Central Television, China International Communications Co., Ltd., TVB
 6 Holdings (USA), Inc., and DISH Network L.L.C. (collectively “Plaintiffs”) will and
 7 hereby do move this Court pursuant to Federal Rule of Civil Procedure 65 for an
 8 order preliminarily enjoining and restraining Defendants Create New Technology
 9 (HK) Limited, Club TVPad, Inc., and Asha Media Group Inc. (collectively,
 10 “Defendants”) from engaging in contributory and/or vicarious copyright
 11 infringement in violation of 17 U.S.C. § 106.

12 As set forth in the accompanying declarations and memorandum of points and
 13 authorities, Defendants are liable for secondary copyright infringement, including by
 14 inducing and materially contributing to direct infringement by others and/or profiting
 15 from direct infringement while declining to exercise their rights to stop or limit such
 16 infringement. Defendants’ conduct threatens both Plaintiffs and the public with
 17 irreparable injury. The injuries to both Plaintiffs and the public are not quantifiable
 18 through monetary damages, and, if allowed continued free rein, will cause ongoing
 19 injury to Plaintiffs and the public in ways that can never be recompensed through law
 20 or equity. As such, injunctive relief is necessary to preserve the status quo pending
 21 determination of the final merits of this action through trial.

22 Plaintiffs therefore respectfully request that this Court grant a preliminary
 23 injunction that enjoins Defendants and their officers, employees, agents, parents,
 24 subsidiaries, affiliates, and those in active concert or participation with them, from:
 25 (a) transmitting, retransmitting, streaming, or otherwise publicly performing, directly
 26 or indirectly, by means of any device or process, Plaintiffs’ copyrighted
 27 programming; (b) authorizing, hosting, reproducing, downloading or otherwise
 28 distributing infringing software applications and associated services that are designed

1 for use on the television set-top devices sold under the name “TVpad”; (c)
2 advertising, displaying, marketing or otherwise promoting said infringing TVpad
3 software applications and associated services; (d) distributing, advertising, marketing
4 or promoting any set-top device that contains, connects to, or offers for download
5 said infringing TVpad software applications and associated services, or promotes
6 said infringing TVpad software applications and associated services through the
7 inclusion of icons for same; and (e) otherwise infringing Plaintiffs’ rights in their
8 copyrighted programming, whether directly, contributorily, vicariously or in any
9 other manner. Plaintiffs also request that this Court order Defendants to identify all
10 domain names and IP addresses and the physical locations of all servers owned,
11 leased, or operated by Defendants that are used in connection with the activities
12 described in (a) and (b) above. Plaintiffs further request that this Court preliminarily
13 enjoin third parties who provide web, server, and file hosting services that are used
14 by Defendants in connection with the activities described in (a) and (b) above, and
15 who receive actual notice of the Court’s preliminary injunction order, from providing
16 such hosting services to Defendants.

17 This Motion is based upon this Notice, the Memorandum of Points and
18 Authorities, the Declarations of Christopher Weil, Nicholas Braak, Shuk Kuen “Lily”
19 Lau, Samuel P. Tsang, Chunguang Lu, Christopher Kuelling, and George Wukoson,
20 and Exhibits 1 through 104, the [Proposed] Order Granting Preliminary Injunction,

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1 and any additional evidence and arguments as may be presented at or before any
2 hearing on this matter.

3 DATED: March 16, 2015

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11 INTERNATIONAL COMMUNICATIONS CO.,
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This lawsuit involves a pirate television service that perpetrates and facilitates copyright infringement on a massive scale. Among the victims of this piracy are Plaintiffs, who hold exclusive rights to transmit and distribute in the United States Chinese-language television programming of Plaintiff China Central Television (“CCTV”), the largest television broadcaster in mainland China, and of Television Broadcasts Limited (“TVB”), the largest television broadcaster in Hong Kong.

Defendant Create New Technology (HK) Ltd. (“CNT”) and its co-conspirators have set up a parallel pirate broadcasting network that, without permission, streams entire CCTV and TVB television channels over the Internet to U.S. users of the “TVpad” set-top box, 24 hours a day, seven days a week. CNT and its affiliates accomplish this piracy in part through a peer-to-peer network—like Napster, Grokster, and BitTorrent—through which TVpad users not only receive unauthorized foreign programming in the U.S., but retransmit it to large numbers of other TVpad users. Infringing software applications or “apps” that enable users to access this peer-to-peer network and view pirated programming are offered for free through CNT’s “TVpad Store,” which is a primary feature of its TVpad device.

CNT publicly claims that the TVpad is just a neutral device like a personal computer, and unauthorized third parties are giving it a bad name. Hogwash. Nothing gets on a TVpad device from that TVpad Store without CNT controlling it and knowing about it. The apps providing access to infringing television programming are in the TVpad Store because CNT wants them there. CNT hosts them on its TVpad Store servers and downloads them over the Internet when users request them. Like Napster and Grokster before it, the raison d'etre of the TVpad is to engage in unlawful activity—namely, unauthorized public performances in the United States of television programming from Asia. While Plaintiffs are confident that discovery will

1 demonstrate that CNT plays a central role in creating the infringing apps (and is thus
 2 a direct infringer), such evidence is not necessary to resolve this motion.

3 Even without discovery, it is apparent that CNT is liable for secondary
 4 copyright infringement because CNT intentionally induces, materially contributes to,
 5 and profits from (while failing to control) copyright infringement by others. CNT
 6 brazenly authorizes, promotes, encourages, and assists in the infringement of
 7 Plaintiffs' copyrighted programs by TVpad users and by the purported third parties
 8 who (in CNT's version of the facts) operate the infringing apps that stream CCTV
 9 and TVB programs. CNT provides the infringing apps for free to all TVpad
 10 purchasers; aggressively advertises the infringing apps and their capacity to deliver
 11 free CCTV and TVB programming; provides technical and customer support to help
 12 its users access (and by definition, illegally retransmit) CCTV and TVB programs;
 13 exercises control over servers that facilitate unauthorized streaming of Plaintiffs'
 14 programs; and directly profits from the infringement made possible by the TVpad.

15 CNT's U.S. distributors—including defendants Asha Media Group Inc. (“Asha
 16 Media”) and Club TVpad, Inc. (“Club TVpad”) (collectively, the “U.S. Distributor
 17 Defendants”)—likewise advertise and aggressively promote the infringing apps and
 18 the infringing capabilities of the TVpad. They also assist customers in using the
 19 infringing apps to access CCTV and TVB programming, and even pre-install
 20 infringing apps and tell customers which apps stream CCTV and TVB channels.

21 Given the compelling evidentiary record, a preliminary injunction is
 22 warranted. Plaintiffs are likely to succeed on their contributory and vicarious
 23 copyright infringement claims against these defendants.¹ Plaintiffs suffer irreparable
 24 injury from the unauthorized and uncompensated streaming of their programming by
 25 entities of dubious legitimacy that have gone to great lengths to cover their tracks.
 26 The balance of equities and public interest likewise favor an injunction, given

27 ¹ Plaintiffs have named other defendants in the Complaint, but proceed only against
 28 CNT, Asha Media, and Club TVpad (collectively, “Defendants”) on this motion.

1 Defendants' blatant and willful wrongdoing and the enormous scope of infringement.
 2 Plaintiffs request that this Court preliminarily enjoin Defendants' unlawful conduct.

3 **II. FACTUAL BACKGROUND**

4 **A. Plaintiffs and Their Copyrighted Works**

5 CCTV and TVB are television broadcasters in mainland China and Hong
 6 Kong, respectively. Through affiliates, CCTV and TVB license copyrighted
 7 television programming for retransmission in the U.S. via authorized satellite, cable,
 8 and other television service providers (the "Authorized U.S. Providers"). Tsang Decl.
 9 ¶¶ 3-4, 11; Lu Decl. ¶¶ 3-5, 9. Plaintiff China International Communications Co.,
 10 Ltd. ("CICC"), a CCTV affiliate, licenses Authorized U.S. Providers to broadcast
 11 CCTV's "Great Wall" package of channels to paying U.S. subscribers. Although
 12 CICC licenses certain rights, CCTV retains and owns the exclusive right to transmit
 13 CCTV programming in the U.S. over the Internet. Lu Decl. ¶¶ 5, 10-11. Plaintiff
 14 TVB Holdings (USA), Inc. ("TVB (USA)"), a wholly owned indirect subsidiary of
 15 TVB, distributes and licenses TVB programming in the U.S. Although it licenses
 16 certain rights, TVB (USA) retains and owns the exclusive right to transmit TVB
 17 programming in the U.S. via Internet Protocol Television (IPTV)² and via Over-the-
 18 Top (OTT)³ in video-on-demand format. Tsang Decl. ¶¶ 3-4, 9, 11. Plaintiff DISH
 19 Network L.L.C. ("DISH") delivers television services to subscribers through both
 20 satellite and Internet platforms. Through licensing agreements, DISH owns the
 21 exclusive rights to transmit in the United States certain CCTV and TVB
 22 programming via satellite and certain TVB programming via OTT, except in video-
 23 on-demand format. Kuelling Decl. ¶¶ 5-6, 9; Lu Decl. ¶¶ 12-13; Tsang Decl. ¶ 12.

25 ² For purposes of this motion, "IPTV" refers to electronic delivery of video
 26 programming via Internet protocol over a service provider's own infrastructure (e.g.,
 AT&T's U-verse).

27 ³ For purposes of this motion, "Over-the-Top" or "OTT" refers to the delivery of
 28 video programming using an Internet connection that is not owned, managed, or
 operated by the party delivering the programming (e.g., Netflix).

B. CNT's TVpad Device and the Infringing TVpad Apps

Defendant CNT is a Hong Kong company that manufactures the TVpad device. Weil Decl. ¶ 9. CNT offers TVpads for sale to U.S. consumers (including in this District) through its website, www.itvpad.com, and through distributors in the United States. *Id.* ¶¶ 10-13, 64-71. CNT sells its latest model, the TVpad4, at retail for \$299. *Id.* ¶ 13, Ex. 4. The TVpad is a set-top box that delivers streaming television programming from Asia to U.S. customers over the Internet without customers paying subscription fees to an authorized provider. *Id.* ¶ 16. TVpad users in the U.S. access pirated CCTV and TVB television programming through apps (the “Infringing TVpad Apps”) they download for free from the “TVpad Store,” a primary feature of each TVpad device. Weil Decl. ¶ 26; Braak Decl. ¶¶ 8, 14-16.

12 Plaintiffs' investigators have identified 15 Infringing TVpad Apps available
13 through the TVpad Store. Braak Decl. ¶ 16. These Infringing TVpad Apps provide
14 CCTV and TVB programming in four modes: "live" streaming, "time-shifted"
15 streaming, and two forms of video-on-demand streaming. Braak Decl. ¶¶ 17, 52;
16 Tsang Decl. ¶ 22. Before accessing the TVpad Store, users must accept CNT's
17 mandatory terms of service, which reserve to CNT the right to "filter, modify, refuse
18 or delete any or all software applications in the TVpad Store," and to "suspend,
19 remove, or disable access to any Products, content, or other materials accessible
20 through the TVpad Store." Braak Decl. ¶¶ 29-30, Ex. 47 (¶¶ 3.8 and 3.10). CNT
21 solicits new apps for the TVpad Store, announces the release of new apps, sells
22 different "editions" of its TVpad4 device with unique app collections, and touts that
23 it "has strictly controlled and managed the way to upload apps on TVpad Store[.]"
24 Weil Decl. ¶ 18, 25, 36, Exs. 7, 9-12, 18; Wukoson Decl. ¶ 2, Ex. 104, p.4.

C. Infringement of Plaintiffs' Copyrighted Programs

26 Plaintiffs' investigator performed forensic analysis of the TVpad device and
27 determined that Infringing TVpad Apps in "live" mode stream CCTV and TVB
28 programming through a peer-to-peer network, in which each TVpad user streams

1 video content to large numbers of other users worldwide. Braak Decl. ¶¶ 10(a), 53-
 2 56, Ex. 45. That is, each TVpad user not only receives live CCTV and TVB
 3 broadcasts, but also simultaneously retransmits those broadcasts to many other
 4 TVpad users in the U.S. and abroad. CNT's website publicly touts the benefits of
 5 TVpad's peer-to-peer streaming. Weil Decl. ¶ 19, Ex. 9, p.1. Plaintiffs' investigator
 6 has also determined that Infringing TVpad Apps in "video-on-demand" modes
 7 stream CCTV and TVB programs to TVpad users directly from servers in the U.S.,
 8 including servers in Los Angeles. Braak Decl. ¶¶ 10(b), (d), 60-62, Ex. 45. Data
 9 packets received from these servers indicate that recorded video files reside on the
 10 servers. *Id.* ¶ 62, Ex. 45. That is, individuals or entities who pirate CCTV and TVB
 11 programs from Asia illegally make copies of those programs and stream those copies
 12 from servers located in the U.S.⁴

13 In late 2014, Plaintiffs' investigator observed and recorded 30 CCTV episodes
 14 and 23 TVB episodes streamed through Infringing TVpad Apps on the TVpad
 15 device. *Id.* ¶ 74-75. Also, a TVB (USA) executive observed and recorded portions of
 16 an additional 406 TVB episodes streamed through Infringing TVpad Apps in video-
 17 on-demand mode. Tsang Decl. ¶ 27. All of these episodes (the "Registered
 18 Programs") are registered with the U.S. Copyright Office. Braak Decl. ¶ 75; Tsang
 19 Decl. ¶ 25, Ex. 92; Lu Decl. ¶ 25, Ex. 94. Plaintiffs have not granted CNT or any
 20 other party a license to stream or retransmit the Registered Programs or any other
 21 CCTV or TVB programs in the U.S. through the Infringing TVpad Apps. Tsang
 22 Decl. ¶ 23; Lu Decl. ¶ 23; Kuelling Decl. ¶ 14.

23 **D. CNT Actively Promotes Infringing Activity**

24 CNT aggressively promotes its pirate television service, the Infringing TVpad
 25 Apps, and the availability of CCTV and TVB programming on the TVpad device, in
 26

27 ⁴ Forensic analysis has demonstrated that Infringing TVpad Apps in time-shift mode
 28 stream CCTV and TVB programming through both the peer-to-peer network and
 directly from servers in China. Braak Decl. ¶¶ 10(c), 63.

1 some cases even falsely stating that such content is authorized. Weil Decl. ¶¶ 28-50,
 2 Exs. 13-29. Indeed, CNT even places in the user interface of the TVpad device
 3 prominent banner advertisements for Infringing TVpad Apps that stream CCTV and
 4 TVB programs. CNT also uses suggestive categories like “Live TV,” “VOD,” and
 5 “TV Dramas” in its TVpad Store to facilitate access to the Infringing TVpad Apps.
 6 Braak Decl. ¶¶ 31-36, 38-41, Exs. 46, 48.

7 CNT’s website boasts that the TVpad delivers “massive contents from China,
 8 Taiwan and HK.” Weil Decl. ¶ 29, Ex. 8. CNT’s blog actively promotes Infringing
 9 TVpad Apps, for instance stating on January 8, 2014 that the infringing Gang Yue
 10 Wang Luo Dian Shi app provides live channels in high definition, “definitely the
 11 favorite of those who love to watch TVB,” illustrating this point with a screenshot of
 12 a TVB program. *Id.* ¶ 36, Ex. 18. CNT solicits new distributors by claiming
 13 “[e]xclusive & authorized live content from mainland China/HK/Taiwan” alongside
 14 CCTV and TVB logos. *Id.* ¶ 33, Ex. 15.

15 Likewise, CNT’s Facebook page regularly promotes the availability of CCTV
 16 and TVB television programs through the Infringing TVpad Apps. *Id.* ¶¶ 39-42, Exs.
 17 20-21. One post by the TVpad administrator on the Facebook page encourages users
 18 to watch a CCTV documentary and places CNT’s TVpad logo directly next to
 19 programming information for CCTV channels. *Id.* ¶ 40, Ex. 20, at 3-6. Other
 20 examples abound, including a promotional video on CNT’s Facebook page that
 21 features icons of Infringing TVpad Apps and a CCTV broadcast. *Id.* ¶ 42, Ex. 21. *See also id.* ¶ 50, Ex. 29, pp. 1-19, 20-38, 39-53, 61-71 (promoting Infringing TVpad
 22 Apps on fan forum).

24 **E. CNT Provides Customer Service and Technical Support that Foster
 25 Infringing Activity**

26 CNT also provides customer support and technical assistance to help TVpad
 27 users access and share infringing streams of CCTV and TVB programming. For
 28 example, a CNT blog post instructs users how to install the infringing BETV app

1 from the TVpad Store, providing step-by-step screenshots. *Id.* ¶ 37, Ex. 19.
 2 Administrators on CNT's Facebook page also instruct users to download and use
 3 Infringing TVpad Apps to access CCTV and TVB programming. *Id.* ¶¶ 43-45, Exs.
 4 22-24. For instance, on June 12, 2014, when a user asked "Anyone knows which app
 5 or channel on tvpad is showing the World Cup???", a CNT administrator advised the
 6 user to try BETV and Sport Online, two Infringing TVpad Apps that stream CCTV
 7 channels. *Id.* ¶ 44, Ex. 23. Similarly, when a user asked "[w]hich tvpad is can see
 8 [sic] tvb day and night and 12 hour back and tvb drama," an administrator wrote
 9 "Could download three party applications from TVpad store for this case[.]" *Id.* ¶ 45,
 10 Ex. 24. Administrators provide similar assistance to users on CNT's official fan
 11 forum at tvpadfans.com. *Id.* ¶ 50, Ex. 29, pp. 81-87.

12 Administrators on CNT's Facebook page and fan forum also provide technical
 13 assistance and updates to customers regarding server problems impacting their ability
 14 to stream infringing television content, demonstrating that CNT exercises control
 15 over servers that facilitate the unauthorized streaming of Plaintiffs' programming.
 16 *See id.* ¶¶ 57, 59, Exs. 34, 36; Braak Decl. ¶ 59, Ex. 51. As recently as January 9,
 17 2015, CNT fielded a barrage of user complaints about problems downloading the
 18 new Gang Yue Wang Luo Dian Shi app (an Infringing TVpad App), apologizing for
 19 the inconvenience, and asking those customers to send a private message to CNT so
 20 that CNT and the supposed "app provider" could address the problem. Weil Decl. ¶
 21 60, Ex. 37.

22 **F. CNT Collaborates With Purported Third-Party App Developers**

23 Even assuming for purposes of this motion that third parties create the
 24 Infringing TVpad Apps, CNT's own statements show it actively collaborates with
 25 those parties to develop and improve infringing content. For example, on August 18,
 26 2013, CNT published a post on its Facebook page asking for suggestions to help
 27 CNT "better serve [its] overseas customers and allow overseas TVpad users to enjoy
 28 better Chinese TV services." One user suggested adding a TVB football channel; the

1 administrator replied that the administrator would “communicate with third-party
 2 application developers” regarding the suggestion. When another user asked CNT to
 3 “improve all streaming sound bit rate and enable stereo,” the administrator responded
 4 that “the application providers are working on this issue.” *Id.* ¶ 54, Ex. 30; *see also*
 5 *id.* ¶ 55, Ex. 31 (CNT administrator stating that request for more Cantonese channels
 6 had been forwarded to the application provider). CNT also delivers messages in the
 7 other direction: in an October 2013 Facebook post, a CNT administrator notified
 8 TVpad users that maintenance carried out on the infringing 516 app might cause
 9 service disruptions. *Id.* ¶ 56, Ex. 32.

10 **G. The U.S. Distributor Defendants Actively Promote Infringement**

11 Defendants Club TVpad and Asha Media distribute the TVpad in the U.S.

12 **Club TVpad.** Defendant Club TVpad is a corporation located in Hayward,

13 California that operates an interactive website from which it offers TVpads for sale to
 14 consumers in California and this District. Lau Decl. ¶¶ 4-5, 9, Exs. 57-58, 62. On its
 15 website and Facebook page, Club TVpad aggressively markets the Infringing TVpad
 16 Apps, the infringing capabilities of the TVpad, and the availability of CCTV and
 17 TVB programming. *See id.* ¶¶ 10-11, Exs. 63-67. For example, a November 2012
 18 post on Club TVpad’s Facebook page stated: “Are you a Direct TV subscriber? Then
 19 you might be aware that they are removing TVB from their line up at the end of the
 20 month. . . . This is the best time to get a TVpad to replace Direct TV.” *Id.* ¶ 10(d), Ex.
 21 66. Club TVpad also operates a forum on which it regularly promotes Infringing
 22 TVpad Apps and assists customers in accessing infringing content. *See id.* ¶ 12-15,
 23 Exs. 68-71.

24 On October 26, 2014, Plaintiffs’ investigator phoned Club TVpad and spoke
 25 with Bennett Wong⁵ about purchasing a TVpad device. Mr. Wong stated that TVB’s
 26 TVBS and Jade channels are available through the TVpad device and that the one-

27
 28 ⁵ Corporate records identify Bennett Wong as Club TVpad’s agent for service of
 process. Lau Decl. ¶ 4, Ex. 57.

1 time purchase price of the TVpad is the only cost to access television programming.
 2 *Id.* ¶ 17. Plaintiffs' investigator purchased a TVpad device from Club TVpad's
 3 website. *Id.* ¶ 18. Club TVpad had pre-installed onto the device several Infringing
 4 TVpad Apps that stream CCTV and TVB programming. Braak Decl. ¶¶ 65-67.

5 **Asha Media.** Asha Media operates an interactive website from which it offers
 6 TVpads for sale to consumers in California and this District. Lau Decl. ¶¶ 21, 23-24.
 7 Promotional blog posts on Asha Media's website advertise the availability of free
 8 CCTV and TVB programming through use of the Infringing TVpad Apps. *Id.* ¶ 28,
 9 Exs. 82-87. For example, a December 2014 blog post promoting the new TVpad4
 10 model states: "Not wanting to pay for streaming television? TVpad4 still streams live
 11 news, sports, and television programming from stations like SoLive, CCTV and
 12 many, many more." *Id.* ¶ 28(a), Ex. 82 (emphasis added). In another example, a June
 13 2014 blog post stated: "There are over 100 different Asian channels and apps to
 14 choose from, but lovers of television shows will certainly want to install the HITV
 15 app [an Infringing TVpad App that streams TVB programs]. Viewers can watch
 16 hundreds of live shows from Hong Kong, including all of their favorite dramas." *Id.*
 17 ¶ 28(d), Ex. 86.

18 On May 30, 2014, Plaintiffs' investigator called Asha Media and spoke to an
 19 individual identifying himself as Amit.⁶ Amit confirmed that CCTV channels were
 20 available on the TVpad device. *Id.* ¶ 30. In response to the investigator's inquiry
 21 about CCTV channels, another representative, acting at Amit's direction, sent the
 22 investigator a spreadsheet listing CCTV and TVB channels and the Infringing TVpad
 23 Apps that access those channels. *Id.* ¶ 32, Ex. 89. Plaintiffs' investigator purchased
 24 two TVpads from Asha Media's tvpad.com website. *Id.* ¶¶ 31, 35. Both devices came
 25 with USB flash drives containing several Infringing TVpad Apps. Braak Decl. ¶ 68-
 26 73.

27
 28 ⁶ Corporate records identify Amit Bhalla as President of Asha Media. Lau Decl. ¶ 22,
 Ex. 74.

H. Defendants Refuse to Cease-and-Desist

Prior to filing this lawsuit, DISH sent cease-and-desist letters to CNT and the U.S. Distributor Defendants, demanding that each stop infringing and/or inducing infringement of Plaintiffs' copyrights. The letters identified the Infringing TVpad Apps on the TVpad3 and listed specific CCTV and TVB channels and programs streamed without authorization through the Infringing TVpad Apps. Kuelling Decl. ¶¶ 15-25, Exs. 95-103. Despite this notice, each Defendant continues to market, advertise, and promote the Infringing TVpad Apps and the availability of infringing television programming on the TVpad device. *Id.* ¶¶ 22, 25.

III. ARGUMENT

Plaintiffs seek to preliminarily enjoin Defendants' secondary infringement of Plaintiffs' copyrights. To obtain preliminary injunctive relief, a plaintiff must establish: "(1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of the equities tips in its favor, and (4) that an injunction is in the public interest." *Fox Television Stations, Inc. v. BarryDriller Content Sys., PLC*, 915 F. Supp. 2d 1138, 1141 (C.D. Cal. 2012) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Plaintiffs satisfy each of these requirements.

A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR SECONDARY COPYRIGHT INFRINGEMENT CLAIMS AGAINST CNT

Although Plaintiffs believe the facts are otherwise and that discovery will so demonstrate, for purposes of this motion we assume that it is unknown third parties (the “App Infringers”) rather than CNT who operate the Infringing TVpad Apps and are responsible for capturing and retransmitting Plaintiffs’ copyrighted programming into and within the United States. Nonetheless, there is overwhelming evidence that CNT actively induces and materially contributes to rampant infringement of Plaintiffs’ copyrighted works by third parties, and profits from infringing conduct it

1 has the right and ability to stop. Plaintiffs are thus likely to succeed on the merits of
 2 their contributory and vicarious copyright infringement claims against CNT.

3 To prevail on their contributory copyright infringement claim, Plaintiffs must
 4 prove that CNT (a) has knowledge of infringing activity; and (b) induces, causes, or
 5 materially contributes to direct infringement by others. *Perfect 10, Inc. v. Google*
 6 *Inc.*, 508 F.3d 1146, 1171 (9th Cir. 2007). In the Ninth Circuit, “inducement” and
 7 “material contribution” are distinct theories of contributory liability. *Perfect 10 v.*
 8 *Visa Int’l Serv. Ass’n*, 494 F.3d 788, 795 (9th Cir. 2007). To succeed on a vicarious
 9 infringement claim, Plaintiffs must show CNT “profit[s] from direct infringement
 10 while declining to exercise a right to stop or limit it.” *Metro-Goldwyn-Mayer Studios*
 11 *Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005). For all theories of secondary
 12 liability, a plaintiff “must establish that there has been a direct infringement by third
 13 parties,” *Google*, 508 F.3d at 1169, which requires a showing of: “(1) ownership of
 14 the infringed material, and (2) violation of at least one exclusive right granted to
 15 copyright holders under 17 U.S.C. § 106 by the infringer.” *A&M Records, Inc. v.*
 16 *Napster*, 239 F.3d 1004, 1013 (9th Cir. 2000).

17 **1. Third Parties Directly Infringe Plaintiffs’ Copyrights**

18 CCTV and TVB’s subsidiary hold copyright registrations for the Registered
 19 Programs, giving rise to a presumption of ownership and validity. 17 U.S.C. §
 20 410(c). As explained above, Plaintiffs CCTV, TVB (USA), and DISH own the
 21 exclusive rights to transmit the Registered Programs and other CCTV and TVB
 22 programming in the U.S. over the Internet in various formats, and therefore have
 23 standing to sue for infringement of those rights. 17 U.S.C. § 501(b). Plaintiffs’
 24 investigator and a TVB executive observed and recorded Plaintiffs’ Registered
 25 Programs being streamed over the Internet into the U.S. through the Infringing
 26 TVpad Apps, and Plaintiffs have not granted anyone a license to do so. Braak Decl.
 27 ¶¶ 74-76; Tsang Decl. ¶¶ 23, 25-27; Lu Decl. ¶ 23, 25; Kuelling Decl. ¶ 14. The only
 28 question, then, is whether the unauthorized streaming of Plaintiffs’ programs over the

1 Internet infringes an “exclusive right granted to copyright holders under 17 U.S.C. §
 2 106.” *Napster*, 239 F.3d at 1013. It does.

3 The Copyright Act grants Plaintiffs the exclusive right to “perform the
 4 copyrighted work publicly.” 17 U.S.C.A. § 106(4). A party publicly performs a
 5 copyrighted work when it “transmit[s] or otherwise communicate[s] a performance
 6 or display of the work … to the public, by means of any device or process, whether
 7 the members of the public capable of receiving the performance or display receive it
 8 in the same place or in separate places and at the same time or at different times.” 17
 9 U.S.C. § 101. In *ABC, Inc. v. Aereo, Inc.*, 134 S. Ct. 2498 (2014), the Supreme Court
 10 held that Aereo publicly performed the plaintiffs’ television programs by streaming
 11 those programs over the Internet to “large numbers of paying subscribers who lack
 12 any prior relationship to the works.” *Id.* at 2510. The Court reasoned that Aereo
 13 performed “publicly” because it streamed programs to “a large number of people
 14 who are unrelated and unknown to each other” who did not “receive performances in
 15 their capacities as owners or possessors of the underlying works.” *Id.* at 2509-10.⁷

16 Here, two categories of direct infringers publicly perform Plaintiffs’ television
 17 programming in the U.S. without authorization: (1) the App Infringers; and (2)
 18 TVpad users. Both the App Infringers and TVpad users transmit Plaintiffs’ programs
 19 over the Internet to large numbers of unrelated TVpad users who have no prior
 20 relationship to, or right to access, CCTV and TVB programs.

21 First, certain Infringing TVpad Apps stream live and time-shifted CCTV and
 22 TVB channels through a peer-to-peer network. For that network to function, someone
 23 must capture CCTV and TVB broadcasts signals in Asia, convert them into digital
 24 data, and stream that data to TVpad users in the peer-to-peer network. Braak Decl. ¶¶

25
 26 ⁷ See also *Warner Bros. Entm’t v. WTV Sys., Inc.*, 824 F. Supp. 2d 1003, 1009-11
 27 (C.D. Cal. 2011) (granting preliminary injunction against service that streamed
 motion pictures without authorization over the Internet to customers); *DISH Network
 L.L.C. v. TV Net Solutions, LLC*, 12-cv-1629, 2014 U.S. Dist. LEXIS 165120, at *13-
 28 14 (M.D. Fla. Nov. 25, 2014) (retransmission of Arabic television channels over the
 Internet into the United States infringed DISH’s public-performance rights).

1 17, 56.⁸ Other Infringing TVpad Apps directly stream CCTV and TVB programs
 2 from servers in the U.S. to large numbers of TVpad users who have no right to access
 3 that content. Braak Decl. ¶ 61-62, Ex. 45. Under *Aereo*, these acts by the App
 4 Infringers directly infringe Plaintiffs' public-performance rights in the Registered
 5 Programs and in their other copyrighted programs.

6 Second, as noted, U.S. TVpad users operate as peers in a peer-to-peer network
 7 through which each user retransmits live and time-shifted CCTV and TVB programs
 8 to large numbers of other TVpad users. Braak Decl. ¶¶ 53-55, 63. “[T]he concep[t] of
 9 public performance . . . cover[s] not only the initial rendition or showing, but also
 10 any further act by which that rendition or showing is transmitted or communicated to
 11 the public.” *Aereo*, 134 S. Ct. at 2506 (quoting H.R. Rep. No. 94-1976, at 63 (1976)).
 12 These retransmissions are “to the public” because TVpad users who receive them
 13 constitute “a large number of people who are unrelated and unknown to each other,”
 14 and the TVpad users are not “owners or possessors of the underlying works.” *Id.* at
 15 2510. Thus, TVpad users directly infringe Plaintiffs' public-performance rights.

16 These facts distinguish the Court's decision in *Munhwa Broadcasting Corp. v.*
 17 *Song*, 2:14-cv-04213 (C.D. Cal. Aug. 25, 2014), where the Court was presented with
 18 no evidence of direct infringement by TVpad users. The Court was not informed that
 19 TVpad users retransmit copyrighted works to other users through a peer-to-peer
 20 network. Presented with no evidence that users publicly perform television programs
 21 to other unrelated users, the Court not surprisingly concluded that the plaintiffs there
 22 had shown only unlicensed “personal viewing” by users. The Court also did not
 23 consider the App Infringers' direct streaming of content to TVpad users. In this case,
 24
 25

26 ⁸ Although the unauthorized streams likely originate in Asia, the infringing acts take
 27 place in the U.S. where the streams are received, viewed, and retransmitted by U.S.
 28 TVpad users. *See Los Angeles News Serv. v. Conus Commc'n Co. P'ship*, 969 F.
 Supp. 579, 582-84 (C.D. Cal. 1997); *Twentieth Century Fox Film Corp. v. iCraveTV*,
 No. CIV.A. 00-120, 2000 WL 255989, at *3 (W.D. Pa. Feb. 8, 2000).

1 Plaintiffs have presented indisputable evidence that both the App Infringers and
 2 TVpad users engage in direct infringement.

3 **2. CNT Induces Third-Party Infringement**

4 Contributory liability under an inducement theory is established where the
 5 defendant has undertaken purposeful acts aimed at assisting and encouraging others
 6 to infringe. *Grokster*, 545 U.S. at 936-37.⁹ In *Grokster*, a group of record companies,
 7 movie studios, and music publishers sued defendants who distributed free software
 8 allowing users to share copyrighted content with others through peer-to-peer
 9 networks (which, as here, constituted direct infringement by users). *Id.* at 918. The
 10 Court held that “one who distributes a device with the object of promoting its use to
 11 infringe copyright, as shown by clear expression or other affirmative steps taken to
 12 foster infringement, is liable for the resulting acts of infringement by third parties.”
 13 545 U.S. at 936-937. In the Ninth Circuit, inducement liability has four elements: (1)
 14 distribution of a device, product, or service; (2) acts of infringement; (3) an object of
 15 promoting use of the device, product, or service to infringe copyright; and (4)
 16 causation. *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1032 (9th Cir.
 17 2013). Each element is satisfied here.

18 **a. CNT distributes both a device and a service.**

19 In *Fung*, the Ninth Circuit held that the first element is satisfied by distribution
 20 of either a device or a service that is “used in accomplishing the infringement.” 710
 21 F.3d at 1033. Here, CNT distributes the TVpad device, which enables users to view
 22 and transmit infringing streams of Plaintiffs’ programming, as well as the TVpad
 23 Store, a service through which users download the Infringing TVpad Apps.

24
 25
 26 ⁹ “[A] defendant may be liable for ‘activity undertaken abroad that knowingly
 27 induces infringement within the United States.’” *Columbia Pictures Indus., Inc. v. Fung*, No. CV 06-5578, 2009 WL 6355911, at *8 (C.D. Cal. Dec. 21, 2009), aff’d in
 28 relevant part, 710 F.3d 1020 (9th Cir. 2013).

b. Third parties directly infringe Plaintiffs' works.

As explained in Part III.A.1, forensic analysis establishes that both the App Infringers and TVpad users directly infringe Plaintiffs' public-performance rights.

c. CNT distributes the TVpad device and TVpad Store with the object of promoting their use to infringe copyright.

A defendant’s intent to foster or promote infringement can be established by “clear expression” of such intent and “affirmative steps taken to foster infringement.” *Grokster*, 545 U.S. at 936-37. In *Grokster*, the Supreme Court relied on several types of evidence to support its finding of inducement liability: First, defendants’ advertising and promotional materials, because “[t]he classic instance of inducement is by advertisement or solicitation that broadcasts a message designed to stimulate others to commit violations.” *Id.* at 938. Both defendants had advertised and promoted themselves to potential customers as alternatives to Napster, a site known for illegal peer-to-peer file sharing. *Id.* at 937-938. Second, the Supreme Court relied on defendants’ provision of customer support and technical assistance to customers engaged in infringing uses. *Id.* Third, the Court found that “neither company attempted to develop filtering tools or other mechanisms to diminish the infringing activity using their software.” *Id.* at 939. Finally, the Court noted that defendants relied on infringing activity for the success of their business models. *Id.* at 939-940. See also *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 454 F. Supp. 2d 966, 987-988 (C.D. Cal. 2006) (on remand, also relying on defendant’s interface having “Top 40” song category that “made it easier for users to share copyrighted content.”).

In *Fung*, the plaintiff film studios sued the operator of websites that facilitated copyright infringement by users through the “BitTorrent” peer-to-peer protocol. *Id.* at 1023-1024, 1026-29. Fung’s websites offered for download “torrent” files that did not themselves contain copyrighted content, but contained data used by a BitTorrent software client to help Fung’s patrons download copyrighted content. *Id.* at 1027-28. Fung’s websites collected and organized torrent files and permitted users to search

1 the collections. The websites also maintained lists such as “Box Office Movies” and
 2 “Top 20 TV Shows” where users could download or upload files for listed works. *Id.*
 3 at 1028, 1036. The Ninth Circuit affirmed summary judgment for plaintiffs on
 4 inducement liability, finding “most important” the fact that Fung encouraged users to
 5 “upload[] torrent files concerning copyrighted content” through the “Box Office
 6 Movies” list on his website. *Fung*, 710 F.3d at 1036. The court observed that Fung
 7 posted entries on his website’s forum with links to torrent files for copyrighted films
 8 and urged users to download them. *Id.* He also “responded affirmatively to requests
 9 for help in locating and playing copyrighted materials.” *Id.* Finally, the court noted
 10 that Fung “took no steps ‘to develop filtering tools or other mechanisms to diminish
 11 the infringing activity’” and profited from “high-volume use [of his websites], which
 12 the record shows is infringing.” *Id.* at 1036-1037 (quoting *Grokster*, 545 U.S. at 939).

13 Here, CNT engages in the same type of purposeful, culpable expression and
 14 conduct present in *Grokster* and *Fung*. First, the TVpad interface and TVpad Store
 15 provide Infringing TVpad Apps to users using banner ads and categories like “Live
 16 TV” and “TV Dramas” that make it easy for users to locate and download Infringing
 17 TVpad Apps. Braak Decl. ¶¶ 31-35, 38-40, 46-50. Second, CNT aggressively
 18 advertises and promotes the Infringing TVpad Apps and their capacity to deliver
 19 CCTV and TVB programming. Weil Decl. ¶¶ 28-42, Exs. 8, 13-21. Third, CNT
 20 provides customer support and technical assistance to users in locating, installing,
 21 and using Infringing TVpad Apps to access and share CCTV and TVB programming.
 22 Weil Decl. ¶¶ 37, 43-47, 50, 57-60, Exs. 19, 22-26, 29, 33-37; Braak Decl. ¶ 59, Ex.
 23 Fourth, CNT actively collaborates with purported third-party App Infringers to
 24 develop and improve infringing content and conveys messages between TVpad
 25 customers and App Infringers. Weil Decl. ¶¶ 54-56, Exs. 30-32. Fifth, CNT has taken
 26 no meaningful steps to develop filtering tools or other mechanisms to stop the
 27 rampant infringement it induces. Indeed, despite its Internet-based streaming
 28 business model, CNT has not (a) posted a policy instructing users how to report

1 infringing activity, (b) appointed an agent to receive notifications of claimed
 2 infringement under the Digital Millennium Copyright Act, 17 U.S.C. § 512 (c)(2), or
 3 (c) adopted any notice-and-takedown procedures in the TVpad Store. *See* Braak
 4 Decl. ¶ 51. Sixth, CNT relies on copyright infringement for the success of its
 5 business model, which depends upon charging consumers an up-front, one-time fee
 6 for unlimited access to infringing programming for which those consumers would
 7 otherwise have to pay ongoing subscription fees. *See* Weil Decl. ¶¶ 4, 28, 35, 38, 62,
 8 Exs. 6, 13, 17, 38; Lau Decl. ¶¶ 26, 30, 34, Ex. 80; Tsang Decl. ¶ 14; Lu Decl. ¶ 15;
 9 Kuelling Decl. ¶¶ 7-8, 11.

10 This overwhelming evidence establishes CNT's unlawful intent to foster,
 11 promote, and profit from direct infringement of Plaintiffs' copyrighted works by both
 12 the App Infringers and TVpad users. The parallels to BitTorrent, Grokster, and other
 13 illegal networks are plain—CNT has built its entire business around helping
 14 customers get for free copyrighted works they would otherwise have to pay for.

15 **d. The TVpad device and TVpad Store service cause
 16 infringement of Plaintiffs' copyrights.**

17 In *Fung*, the Ninth Circuit held that, once intent to promote infringement is
 18 found, “the only causation requirement is that the product or service at issue was
 19 used to infringe the plaintiff’s copyrights.” *Fung*, 710 F.3d at 1037. The Ninth
 20 Circuit specifically rejected Fung’s argument that “the acts of infringement must be
 21 caused by the manifestations of the distributor’s improper object—that is, by the
 22 inducing messages themselves.” *Fung*, 710 F.3d at 1037. *See also Grokster*, 454 F.
 23 Supp. 2d at 985-986 (rejecting argument that plaintiffs had to prove that the inducing
 24 statements “caused specific acts of infringement”). Here, there is overwhelming
 25 evidence the TVpad device and TVpad Store are being used to infringe Plaintiffs’
 26 copyrighted works, and that CNT is a but-for cause of that infringement because its
 27 hosting, distribution, and promotion of the Infringing TVpad Apps is the very
 28 mechanism which makes that infringement possible by a large number of users.

1 Braak Decl. ¶¶ 15-17, 52-63, 74-75; Tsang Decl. ¶¶ 21-27. Plaintiffs are therefore
 2 likely to succeed on their claim against CNT for contributory infringement based on
 3 inducement.

4 **3. CNT Materially Contributes to Third-Party Infringement of**
5 Plaintiffs' Copyrights

6 As an alternative theory of contributory infringement, Plaintiffs are also likely
 7 to prevail in showing that CNT has knowledge of and materially contributes to direct
 8 infringements by the App Infringers and TVpad users. In the Ninth Circuit, “material
 9 contribution” can be established by proof that “a computer system operator has actual
 10 knowledge that specific infringing material is available using its system and can take
 11 simple measures to prevent further damage to copyrighted works, yet continues to
 12 provide access to infringing works.” *Google*, 508 F.3d at 1172.

13 Here, DISH sent CNT letters notifying CNT of specific Infringing TVpad
 14 Apps available through the TVpad Store, specific CCTV and TVB channels being
 15 infringed by those apps, and 145 CCTV and TVB programs streamed without
 16 authorization through the TVpad device. Kuelling Decl. ¶ 21. Those letters put CNT
 17 on notice of specific infringing material in the TVpad Store. *See Napster*, 239 F.3d at
 18 1022 n.6 (defendant had actual notice of infringement because RIAA informed it of
 19 infringing files). Moreover, numerous posts and statements on CNT’s website and
 20 Facebook page show that CNT is well aware that its device and service are being
 21 pervasively used by its customers to infringe CCTV and TVB channels and programs
 22 on a massive scale. Indeed, that is precisely what CNT encourages and enables.

23 CNT has failed to take any steps to protect Plaintiffs’ copyrighted works. At a
 24 minimum, CNT could at any time (a) stop making the identified Infringing TVpad
 25 Apps available through the TVpad Store, and (b) take steps to block or filter such
 26 Apps from functioning on the device. CNT’s terms of service expressly reserve the
 27 right to do so. Braak Decl. ¶ 30, Ex. 47. By failing to take these steps, CNT
 28 materially contributes to the App Infringers’ infringing public performances. *See*

1 *Google*, 508 F.3d at 1172 (“assist[ing] a worldwide audience of users to access
 2 infringing materials” constitutes material contribution); *Gershwin Publ’g v.
 3 Columbia Artists Mgmt.*, 443 F.2d 1159, 1163 (2d Cir. 1971) (creating audience for
 4 infringing performance supports finding of contributory liability). CNT also
 5 materially contributes to infringement by TVpad users by providing software that
 6 causes them to act as infringing peers in TVpad’s peer-to-peer network. *See Napster*,
 7 239 F.3d at 1022 (peer-to-peer software provides “the site and facilities” for direct
 8 infringers and constitutes contributory infringement). Plaintiffs are thus likely to
 9 succeed on their claim that CNT materially contributes to third-party infringement.

10 **4. CNT Vicariously Infringes Plaintiffs’ Copyrights**

11 Plaintiffs are also likely to succeed on their vicarious infringement claim,
 12 which requires a showing that CNT (1) has the right and ability to control the
 13 infringing conduct, and (2) derives a direct financial benefit from the infringing
 14 activity. *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 261 (9th Cir. 1996).

15 A defendant “exercises control over a direct infringer when he has both a legal
 16 right to stop or limit the directly infringing conduct, as well as the practical ability to
 17 do so.” *Google*, 508 F.3d at 1173. “The ability to block infringers’ access to a
 18 particular environment for any reason whatsoever is evidence of the right and ability
 19 to supervise.” *Napster*, 239 F.3d at 1023. In *Fonovisa v. Cherry Auction*, for
 20 example, the Ninth Circuit held that a swap meet operator exercised control over
 21 vendors’ sale of pirated goods because the operator had a contractual right to
 22 terminate vendors and could physically exclude vendors from the swap meet, putting
 23 an end to the infringing sales taking place there. 76 F.3d at 261-63.

24 As its terms of service attest, CNT has the power to exclude Infringing TVpad
 25 Apps from its TVpad Store and to block those Apps from operating on the TVpad
 26 device. Braak Decl. ¶ 30, Ex. 47. CNT’s public statements also show it has practical,
 27 operational control over what apps are included in the Store and over the servers
 28 necessary for effective streaming of video content. Weil Decl. ¶ 18, 25, 36, 57-59

1 Exs. 7, 9-12, 18, 33-36; Wukoson Decl. ¶ 2, Ex. 104; Braak Decl. ¶¶ 24-26. Even
 2 assuming there are actual third-party app providers, CNT clearly has the right and
 3 ability to control infringing conduct occurring through its device and service.

4 “Financial benefit exists where the availability of infringing material “acts as a
 5 ‘draw’ for customers.” *Napster*, 239 F.3d at 1023. In *Fonavisa*, the swap meet
 6 operator reaped “substantial financial benefits from admission fees, concession stand
 7 sales and parking fees, all of which flow directly from customers who want to buy
 8 the counterfeit recordings at bargain basement prices.” *Fonavisa*, 76 F.3d at 263. In
 9 *Napster*, Napster’s revenue was dependent on “increases in [its] user-base”
 10 stimulated by “the quality and quantity of available [infringing] music.” *Napster*, 239
 11 F.3d at 1023. Here, ample evidence demonstrates that the Infringing TVpad Apps—
 12 and the free programming streamed through them—constitute a huge draw for
 13 potential customers of the TVpad. *See* Weil Decl. ¶¶ 61-63, Exs. 9, 38. CNT’s own
 14 advertising and promotional materials confirm this conclusion. Weil Decl. ¶¶ 28-47,
 15 50. Plaintiffs are therefore likely to succeed on their claim against CNT for vicarious
 16 infringement.

17 **B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR
 18 CONTRIBUTORY INFRINGEMENT CLAIMS AGAINST THE
 19 U.S. DISTRIBUTOR DEFENDANTS**

20 Plaintiffs are also likely to succeed on their claims for contributory
 21 infringement against the U.S. Distributor Defendants on an inducement theory. The
 22 first, second, and fourth elements of inducement liability are satisfied for the reasons
 23 explained above: (1) each U.S. Distributor Defendant distributes the TVpad device,
 24 Lau Decl. ¶¶ 9, 23-24; (2) the App Infringers and TVpad users directly infringe
 25 Plaintiffs’ copyrights (Part III.A.1, *supra*); and (4) the TVpad (along with the TVpad
 26 Store service) is the vehicle by which App Infringers and TVpad users directly
 27 infringe Plaintiffs’ copyrighted works (Part III.A.2(d), *supra*). The only question is
 28 whether each U.S. Distributor Defendant distributes the TVpad device with “an

1 object of promoting use of the device . . . to infringe copyright.” *Fung*, 710 F.3d at
 2 1032. The answer is yes.

3 The evidence is overwhelming that both Asha Media and Club TVpad intend
 4 to foster and promote copyright infringement through the TVpad device. Both
 5 aggressively advertise and promote the Infringing TVpad Apps and the availability of
 6 CCTV and TVB programming through use of those Apps. Lau Decl. ¶¶ 10-12, 15,
 7 26-28, Exs. 63-68, 71, 81-87. Both provide customer support and technical assistance
 8 to help TVpad users access infringing CCTV and TVB programming. Lau Decl. ¶¶
 9 13-14, 16, 20 30, 32-34, Exs. 60-70, 72. In direct interactions with Plaintiffs’
 10 investigator, both touted the availability of CCTV or TVB content on the TVpad
 11 device. Lau Decl. ¶¶ 17, 30. Further, both took affirmative steps to help facilitate
 12 user infringement: Club TVpad shipped a TVpad device with Infringing TVpad Apps
 13 pre-installed, and Asha Media shipped two TVpad devices along with USB flash
 14 drives that contained several Infringing TVpad Apps. Braak Decl. ¶¶ 65-73. Asha
 15 Media and Club TVpad also both know that TVpad users not only receive but also
 16 illegally retransmit television programming to other TVpad users. Indeed, Asha
 17 Media states on its website that “[t]he pictures are high in quality and stable due to
 18 the upgraded P2P service [the TVpad] uses.” Lau Decl. ¶ 27, Ex. 81. Similarly,
 19 administrators and moderators on Club TVpad’s forum have advised customers on
 20 issues associated with peer-to-peer streaming. *Id.* ¶ 14, Ex. 70.

21 In sum, both “clear expression” and “affirmative steps” demonstrate the U.S.
 22 Distributor Defendants’ intent to foster, promote, and encourage infringement of
 23 CCTV and TVB programming by TVpad users and the App Infringers.

24 **C. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY ABSENT
 25 AN INJUNCTION**

26 Unauthorized and uncompensated Internet streaming that competes directly
 27 with the television programming of a copyright owner and its authorized licensees
 28 causes significant and multifaceted harms that are “neither easily calculable, nor

1 easily compensable.” *BarryDriller*, 915 F. Supp. 2d at 1147 (granting preliminary
 2 injunction).¹⁰ Here, the accompanying declarations establish that, unless restrained,
 3 Defendants’ infringing conduct—operation of a service providing Infringing TVpad
 4 Apps for download and otherwise reproducing and distributing those Infringing
 5 TVpad Apps whose sole purpose is to violate exclusive public performance rights—
 6 will continue to irreparably harm Plaintiffs.

7 First, Defendants’ conduct has materially reduced the number of individuals
 8 who subscribe to authorized U.S. platforms for CCTV and TVB programming in the
 9 United States and the price those individuals are willing to pay, reducing Plaintiffs’
 10 revenues in amounts that are difficult to quantify. *See* Tsang Decl. ¶¶ 29-32; Lu Decl.
 11 ¶ 27-28; Kuelling Decl. ¶¶ 26-32. Lost market share and price erosion are textbook
 12 irreparable harms. *See, e.g.*, *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142,
 13 1153 (Fed. Cir. 2011); *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 861-62 (Fed.
 14 Cir. 2010); *WTV*, 824 F. Supp. 2d at 1013 (“[T]he loss of revenue to Plaintiffs and
 15 their licensees, which is already significant, will continue to increase, and constitutes
 16 irreparable injury to Plaintiffs.”).

17 Second, Defendants’ ongoing infringement impairs the ability of CCTV, CICC
 18 and TVB (USA) to negotiate favorable license agreements with Authorized U.S.
 19 Providers and others. Tsang Decl. ¶ 39; Lu Decl. ¶ 29. “[I]f Defendants can transmit
 20 Plaintiffs’ content without paying a fee, Plaintiffs’ existing or prospective licensees
 21 will demand concessions to make up the loss of viewership to non-paying
 22 alternatives.” *BarryDriller*, 915 F. Supp. 2d at 1147; *WTV*, 824 F. Supp. 2d at 1012-
 23 1013. Stated otherwise, “[t]he availability of Plaintiffs’ content from sources other

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 26 ¹⁰ *See also* *WTV*, 824 F. Supp. 2d at 1012-13 (granting preliminary injunction); *Fox*
 27 *Television Stations, Inc. v. Filmon X LLC*, 966 F. Supp. 2d 30, 49-51 (D.D.C. 2013)
 28 (granting preliminary injunction); *iCraveTV*, 2000 WL 255989, at *8 (granting
 preliminary injunction).

1 than Plaintiffs also damages Plaintiffs' goodwill with their licensees." *BarryDriller*,
 2 915 F. Supp. 2d at 1147. *See* Tsang Decl. ¶ 40; Lu Decl. ¶ 30; Kuelling Decl. ¶ 33.

3 Third, Defendants' infringing conduct undermines Plaintiffs' strategic choices
 4 about where, when, and how to distribute their programs, causing harm to their
 5 goodwill with U.S. audiences and Authorized U.S. Providers. *See* Tsang Decl. ¶ 33-
 6 35, 37; Lu Decl. ¶¶ 31-33. Defendants' pirate retransmission service not only streams
 7 CCTV and TVB programming in the U.S. without a license, but does so several
 8 hours before that programming is available in the U.S. through authorized channels.
 9 *See* Tsang Decl. ¶ 35; Lu Decl. ¶ 33. Defendants' unlawful activities also deprive
 10 Plaintiffs of their right not to disseminate many of their programs in the U.S. *See*
 11 Tsang Decl. ¶ 36; Lu Decl. ¶ 34. Defendants' conduct usurps and irreparably harms
 12 Plaintiffs' exclusive right to control the distribution, performance, and licensing of
 13 their copyrighted works. *See* WTV, 824 F. Supp. 2d at 1012-13 (unauthorized video
 14 streaming service irreparably harmed film studios by allowing streaming of works
 15 during periods when plaintiffs had granted licensees exclusive rights to offer the
 16 works).

17 Fourth, Defendants' conduct threatens to interfere with Plaintiffs' ability to
 18 develop a lawful market for Internet distribution of their programming. In
 19 *BarryDriller*, the court found irreparable harm when the defendants' streaming
 20 service "compete[d] with Plaintiffs' ability to develop their own internet distribution
 21 channels." 915 F. Supp. 2d at 1147. In WTV, the court found that an unauthorized
 22 streaming service "threatens to confuse consumers about video on demand products,
 23 and to create incorrect but lasting impressions with consumers about what constitutes
 24 lawful [Internet-based] video on demand exploitation of Plaintiff's Copyrighted
 25 Works, including confusion or doubt regarding whether payment is required for
 26 access to Copyrighted Works." 824 F. Supp. 2d 1013. The same harms exist here.
 27 Tsang Decl. ¶ 38; Lu Decl. ¶ 35; Kuelling Decl. ¶ 28.

1 Fifth, Defendants' infringing conduct impairs Plaintiffs' brand, reputation, and
 2 goodwill with consumers by associating their programming with poor quality
 3 viewing experiences on the TVpad device. *See WTV*, 824 F. Supp. 2d at 1014. Here,
 4 Plaintiffs' investigators observed numerous problems with the TVpad viewing
 5 experience, such as video failing to stream or terminating prematurely, low video
 6 quality, pixilation, and sound issues. Braak Decl. ¶ 59. *See also id.* Ex. 51 (posts by
 7 TVpad users detailing a wide variety of technical difficulties); Weil Decl. ¶¶ 57-60,
 8 Ex. 33-37 (posts on CNT's Facebook page and fan forum apologizing to customers
 9 for technical difficulties).

10 Finally, “[a]bsent an injunction directing Defendants to prevent infringement
 11 of Plaintiffs' works, it is highly likely that Defendants' existing users and new users
 12 [will] continue to use Defendants' system to infringe Plaintiffs' copyrights.”

13 *Columbia Pictures Indus., Inc. v. Fung*, 2:06-cv-05578-SVW (JCx), Modified Order
 14 Granting Plaintiff's Motion for Permanent Injunction, slip op. at 7 (C.D. Cal. Aug. 5,
 15 2013) (Dkt. 551) (attached hereto as Exhibit A). Courts also find irreparable harm
 16 where a defendant is unlikely to be able to pay a damages award because of the
 17 massive scale of infringement. *Grokster*, 518 F. Supp. 2d 1197, 1217 (C.D. Cal.
 18 2007) (irreparable harm where defendant “induce[d] far more infringement than it
 19 could ever possibly redress with damages”). Given the massive infringement for
 20 which Defendants are secondarily liable here, and the nature of Defendants' business
 21 activities, it is unlikely that Defendants will be able to satisfy a damages award.

22 **D. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST
 23 FAVOR AN INJUNCTION**

24 Both the balance of hardships and the public interest also favor a preliminary
 25 injunction. While Plaintiffs face immediate and irreparable harm to their legitimate
 26 business interests, Defendants “cannot complain of the harm that will befall [them]
 27 when properly forced to desist from [their] infringing activities.” *BarryDriller*, 915

F. Supp. 2d at 1147 (quoting *Triad Sys. Corp. v. Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995)); WTV, 824 F. Supp. 2d at 1014-1015.

Furthermore, “it is virtually axiomatic that the public interest can only be served by upholding copyright protections and correspondingly, preventing the misappropriation of skills, creative energies and resources which are invested in the protected work.” *WTV*, 824 F. Supp. 2d at 1015 (citation omitted); *BarryDriller*, 915 F. Supp. 2d at 1148. Any public interest the public may have “in receiving copyrighted content for free is outweighed by the need to incentivize the creation of original works.” *Grokster*, 518 F. Supp. 2d at 1222.

IV. CONCLUSION

For the reasons set forth above and in the accompanying declarations and exhibits, Plaintiffs respectfully request that this Court grant a preliminary injunction as set forth in the accompanying [Proposed] Order Granting Preliminary Injunction.

DATED: March 16, 2015

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APPENDIX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES
INDUSTRIES, INC., *et al.*

Plaintiffs,

v.

GARY FUNG, *et al.*

Defendants.

Case No. 2:06-cv-05578-SVW (JCx)

**MODIFIED ORDER GRANTING
PLAINTIFFS' MOTION FOR
PERMANENT INJUNCTION**

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**MODIFIED ORDER GRANTING
PLAINTIFFS'
MOTION FOR PERMANENT INJUNCTION**

1 **I. BACKGROUND**

2 On December 21, 2009, the Court granted Plaintiffs' Motion for Summary
 3 Judgment on Liability (the "Order," docket no. 391), finding that Defendants Gary
 4 Fung and Isohunt Web Technologies, Inc. (collectively, "Defendants") induced
 5 infringement of Plaintiffs' copyrights in violation of United States copyright law.
 6 See Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, 545 U.S. 913, 125 S. Ct. 2764,
 7 162 L. Ed. 2d 781 (2005). The Court found that "evidence of Defendants' intent to
 8 induce infringement is overwhelming and beyond reasonable dispute," Order at 25,
 9 and therefore that "Defendants' inducement liability is overwhelmingly clear," *id.* at
 10 15.

11 On the issue of a permanent injunction, the Court has considered the briefs
 12 filed by the parties, the arguments presented at the March 22, 2010 hearing on this
 13 matter, and the proposed language and arguments presented by the parties in
 14 response to the Court's proposed order. The Court has also considered the
 15 instructions of the Ninth Circuit regarding the permanent injunction in its opinion
 16 dated March 21, 2013. Columbia Pictures Indus. v. Fung, 710 F.3d 1020, 1047-
 17 1049 (9th Cir. 2013). Based on the foregoing and all matters of record in this
 18 action, pursuant to Federal Rule of Civil Procedure 65 and 17 U.S.C. § 502, the
 19 Court enters a Permanent Injunction in favor of Plaintiffs and against Defendants in
 20 accordance with the terms contained herein.

21 **II. DISCUSSION**

22 The Court concludes that a permanent injunction should issue to restrain
 23 further infringement of Plaintiffs' copyrights. Plaintiffs have satisfied their burden
 24 under eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 126 S. Ct. 1837, 164 L.
 25 Ed. 2d 641 (2006), "(1) that [they have] suffered an irreparable injury; (2) that
 26 remedies available at law, such as monetary damages, are inadequate to compensate
 27 for that injury; (3) that, considering the balance of hardships between the plaintiff[s]
 28

1 and defendant[s], a remedy in equity is warranted; and (4) that the public interest
 2 would not be disserved by a permanent injunction.” Id. at 391.

3 **A. Irreparable Harm**

4 Plaintiffs have demonstrated that they have suffered irreparable harm, and
 5 would suffer further irreparable harm from Defendants’ continued infringement, in
 6 three independent ways. First, given the staggering volume of infringement of
 7 Plaintiffs’ copyrights, it is extremely unlikely that Defendants will be able fully to
 8 compensate Plaintiffs monetarily for the infringements Defendants have induced in
 9 the past, or the infringements they could induce in the future. Metro-Goldwyn-
 10 Mayer Studios, Inc. v. Grokster, 518 F. Supp. 2d 1197, 1217 (C.D. Cal. 2007)
 11 (“Grokster V”). Second, given the way in which Defendants’ system works, when
 12 Defendants’ end-users download one of Plaintiffs’ works, the end-users
 13 automatically and simultaneously further distribute the work to innumerable others
 14 as a required part of the download process; additionally, at the conclusion of the
 15 download, Defendants’ end-users obtain an unprotected digital copy of Plaintiffs’
 16 work that those end-users can further distribute indefinitely at will.¹ Thus, when
 17 Defendants induce infringement, “Plaintiffs’ copyrighted works can be unstoppably
 18 and near-instantaneously infringed throughout the computer-literate world with the
 19

20 ¹ Defendants argue that the Supreme Court’s holding in Grokster was limited solely
 21 to “devices” that induce infringement. Defendants further argue that they are
 22 immune from an injunction against their “activities.” (Opp. at 6-7, 19.) Defendants’ argument lacks merit. Nothing in Grokster requires that there be a
 23 “device”; the central inquiry is based on the defendants’ “purposeful, culpable
 24 expression and conduct.” Grokster, 545 U.S. at 937. The Supreme Court’s holding
 25 in Grokster was not limited solely to “devices.” The Supreme Court used terms
 26 such as “device,” “product,” and “tool” interchangeably. Id. at 940 n.13.

27 In addition, the clear import of the Supreme Court’s opinion was that a
 28 defendant may be secondarily liable for his conduct and activities, separate and
 apart from any products, devices, or tools he distributes.

1 files obtained by [Defendants'] end-users. Plaintiffs' power to control their rights
 2 has been so compromised by the means through which [Defendants] encouraged
 3 endusers to infringe (digital files plus the internet) that the inducement amounts to
 4 irreparable harm." Id. at 1218-19. Third, it is axiomatic that the availability of free
 5 infringing copies of Plaintiffs' works through Defendants' websites irreparably
 6 undermines the growing legitimate market for consumers to purchase access to the
 7 same works. E.g., Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S.
 8 913, 928-29, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) ("digital distribution of
 9 copyrighted material threatens copyright holders as never before, because every
 10 copy is identical to the original, copying is easy, and many people (especially the
 11 young) use file-sharing software to download copyrighted works"); A&M Records,
 12 Inc. v. Napster, Inc., 239 F.3d 1004, 1017 (9th Cir. 2001) (citing "Napster's
 13 deleterious effect on the present and future digital download market").

14 **B. Inadequate Remedy at Law**

15 For many of the same reasons,² Plaintiffs have demonstrated that they do not
 16 have an adequate remedy at law for the harm that has been or could be caused by
 17 Defendants' infringement. "'Damages are no remedy at all if they cannot be
 18 collected.'" Grokster V, 518 F. Supp. 2d at 1219 (quoting Douglas Laycock, *The*
 19 *Death of the Irreparable Injury Rule*, 103 Harv. L. Rev. 687, 716 (1990)).
 20 Likewise, "[a] legal remedy is inadequate if it would require a multiplicity of suits."
 21 Id. at 1220 (quoting Laycock, 103 Harv. L. Rev. at 714) (alteration in original).

22 Here, as in Grokster V, "[t]he irreparable harm analysis centers on two basic
 23 themes: (1) [Defendant] has and will continue to induce far more infringement than

25
 26 ² The "irreparable harm" and "inadequate remedies at law" inquiries are essentially
 27 identical. Grokster V, 518 F. Supp. 2d at 1219
 28

1 it could ever possibly redress with damages; and (2) Plaintiffs' copyrights
 2 (especially those of popular works) have and will be rendered particularly
 3 vulnerable to continuing infringement on an enormous scale due to [Defendant's]
 4 inducement." Grokster V, 518 F. Supp. 2d at 1217. Both of these elements are
 5 present in this case as well.

6 In the Summary Judgment Order, the Court concluded that the evidence
 7 "strongly suggests that some 2.5 million United States citizens visited Defendants'
 8 websites each month" and that "at one point, Defendants' websites were accessed
 9 over 50 million times from the United States in a single month." Order at 41. The
 10 Court also concluded that Plaintiffs' statistical evidence showed that over 90% of
 11 the downloads using Defendants' websites were associated with copyright-
 12 infringing materials. Accord A& M Records, Inc. v. Napster, Inc., 239 F.3d 1004,
 13 1013 (9th Cir. 2001) (relying on statistical evidence to show extent of infringement);
 14 Grokster V, 518 F. Supp. 2d at 1217-19 (same). Defendants have introduced no
 15 evidence to rebut these showings.

16 In addition, given the multiplicity of infringements of Plaintiffs' works caused
 17 by a single user downloading a single dot-torrent file from Defendants' sites, see
 18 Order at 6-7, it would be untenable for Plaintiffs to track and proceed against each
 19 infringing end-user. Additionally, Plaintiffs would not be able to recover damages
 20 from Defendants for the inevitable derivative infringements that would occur
 21 outside Defendants' websites when copyrighted content acquired as a result of
 22 Defendants' inducement is further distributed by Defendants' users. These further
 23 infringements are a continuing threat, making remedies at law insufficient to
 24 compensate for Plaintiffs' injuries. The only realistic method for remedying such
 25 future harm from Defendants' inducement is by way of a permanent injunction.
 26 Grokster V, 518 F. Supp. 2d at 1220.

27
 28

C. Balance of Hardships

2 The balance of hardships between Defendants and Plaintiffs also warrants the
3 issuance of a permanent injunction. As described, absent an injunction, Plaintiffs
4 would suffer a severe hardship as a result of Defendants' inducement of
5 infringement. The injunction being ordered by the Court would not pose a
6 corresponding hardship on Defendants. The Court has already found that
7 Defendants' websites are used overwhelmingly for copyright infringement, with
8 upwards of 95% of all dot-torrent files downloaded from Defendants' websites
9 corresponding to works that are infringing or at least highly likely to be infringing.
10 Summary Judgment Order at 10-11. Obviously, the harm to Defendants from no
11 longer being able to exploit and profit from that infringement is not a hardship the
12 Court need consider. See Cadence Design Sys., Inc. v. Avant! Corp., 125 F.3d 824,
13 829 (9th Cir. 1997) (defendant "cannot complain of the harm that will befall it when
14 properly forced to desist from its infringing activities") (citation and internal
15 quotation marks omitted). Beyond that, the Court's injunction is limited to
16 Plaintiffs' copyrights and will not substantially interfere with any claimed non-
17 infringing aspects of Defendants' system.

18 The Court is further persuaded that Defendants would likely continue to
19 induce infringement in the absence of a permanent injunction. As this Court
20 observed in Grokster:

[A] successful inducer will sometimes have no need to repeat the infringing message ad infinitum. This is especially likely to be the case where the product in question is overwhelmingly used for infringing purposes, and requires little or no specialized training to operate. At a certain point, the inducer can simply continue to distribute the product without any additional active encouragement, recognizing that the marketplace will respond in turn. Thus, once the market has internalized the inducer's promotion of infringement, the resulting infringements should be attributable to that defendant even

1 though he/she no longer chooses to actively promote that
2 message.

3 Grokster V, 518 F. Supp. 2d at 1233-34.

4 The Court finds those observations fully applicable to this case. For years,
5 Defendants operated their websites as popular destinations for copyright
6 infringement and etched their niche in the market for infringement. Defendants
7 were enormously successful in building a user-base of infringers that, by
8 Defendants' own account, number in the millions. See Order at 42. As stated, the
9 evidence of Defendants' illegal objective was "overwhelming" and the resulting
10 amount of infringement of Plaintiffs' copyrights has been staggering. Defendants'
11 websites "remain[] inexorably linked to [Defendants'] historical efforts to promote
12 infringement." Grokster V, 518 F. Supp. 2d at 1235. Absent an injunction directing
13 Defendants to prevent infringement of Plaintiffs' works, it is highly likely that
14 Defendants' existing users and new users would continue to use Defendants' system
15 to infringe Plaintiffs' copyrights.

16 Moreover, the Court's conclusion that Defendants are likely to continue to
17 induce copyright infringement is warranted by (1) the great extent to which
18 Defendants have actively encouraged copyright infringement in the past; (2) the fact
19 that Defendants' very business model, at its core, depends upon copyright
20 infringement, and Defendants would financially benefit from further infringement;
21 and (3) the fact that, even since the Court's Order finding Defendants liable for
22 inducing copyright infringement, Defendants have not taken meaningful steps to
23 mitigate the infringement of Plaintiffs' works. Defendants' proposed "primal" or
24 "lite" website contains all of the same indexing and searching functions as the
25 original websites, only with a different interface for the users to operate. (See
26 Servodidio Reply Decl., Ex. G, at 15-21.) In fact, Defendants have not even ceased
27 all of the active conduct of encouraging and promoting infringement which the
28 Court specifically identified in its Summary Judgment Order. A number of features

1 mentioned in this Court's Summary Judgment Order remain active: a "top 20" TV
 2 shows and movies feature; a "top searches" feature (which invariably includes all, or
 3 almost all, copyrighted works); and access to Plaintiffs' works that are specifically
 4 identified as the subject of this action. (Pls. Reply at 10.) Defendant Fung has
 5 affirmatively stated that he will not take steps to prevent infringement on his
 6 websites unless he is ordered to do so by this Court. (Fung interview, quoted in
 7 Defs. Opp. at 3.) In short, Defendants' past and present statements and conduct
 8 establish that Defendants "fully intend[] to continue [their] distribution of the" tools
 9 that are central to their inducement of copyright infringement. See Grokster V, 518
 10 F. Supp. 2d at 1229-30.

11 As this Court explained at length in Grokster V, a defendant who is liable for
 12 inducing infringement may be enjoined from **distributing** his products in the future,
 13 **even if** he no longer promotes an inducing message. Although the quote is lengthy,
 14 it is worth setting forth in full:

15

16 The Court is mindful of the following critical passage from the Supreme
 Court's opinion in this case:

17

18 It is not only that encouraging a particular consumer to infringe a
 19 copyright can give rise to secondary liability for the infringement that
 20 results. Inducement liability goes beyond that, and the distribution of a
 21 product can itself give rise to liability where evidence shows that the
 22 distributor intended and encouraged the product to be used to infringe.
 23 In such a case, the culpable act is not merely the encouragement of
 24 infringement but also the distribution of the tool intended for infringing
 25 use.

26

Grokster, 545 U.S. at 940 n. 13, 125 S.Ct. 2764.

27

28

In effect, the "culpable act," which induces third parties to
 infringement, certainly manifests itself once two components are present--
 distribution and promotion/ encouragement. See Amazon.com, 487 F.3d at
 727 n. 11; Visa, 494 F.3d at 800-01. It is important to recognize that the
 Supreme Court did not impose any strict timing relationship between specific
 acts promoting infringements, distribution, and the direct infringements
 themselves. For a party to be liable for inducement, distribution may begin
 prior to any promotion of infringement, distribution and promotion can occur
 at the same time, and most critically, **distribution can follow past**

promotion. This highlighted portion of the above sentence is crucial. As a matter of common sense, a successful inducer will sometimes have no need to repeat the infringing message ad infinitum. This is especially likely to be the case where the product in question is overwhelmingly used for infringing purposes, and requires little or no specialized training to operate. At a certain point, the inducer can simply continue to distribute the product without any additional active encouragement, recognizing that the marketplace will respond in turn.

Thus, once the market has internalized the inducer's promotion of infringement, the resulting infringements should be attributable to that defendant even though he/she no longer chooses to actively promote that message. There is no difference between these infringements and those that are consummated while the defendant is still engaging in the active promotion of infringement.

Critically, Justice Souter recognized the importance of this relationship between past promotion and future distribution during the Supreme Court's oral argument in this case:

But I don't ... understand how you can separate the past from the present in that fashion. One, I suppose, could say, "Well, I'm going to make inducing remarks Monday through Thursday, and I'm going to stop, Thursday night." The sales of the product on Friday are still going to be sales which are the result of the inducing remarks Monday through Wednesday. And you're asking, in effect--you're asking us--to ignore Monday through Thursday.

Metro-Goldwyn-Mayer Studios, Inc., v. Grokster, Ltd., No. 04-480, Mar. 29, 2005 (“Oral Argument Transcript”), at 30. Thus, distribution of a product capable of substantial noninfringing uses, even after the promotion/encouragement of infringement ceases, can by itself constitute inducement. StreamCast’s future distribution is undoubtedly connected to past promotional efforts. In its September 27, 2006 Order, this Court recounted in detail, among other undisputed facts, StreamCast’s efforts to promote its software to the Napster market as a mechanism for infringing Plaintiffs’ copyrighted works. Grokster, 454 F.Supp.2d at 985-86. These promotional efforts proved to be wildly successful, especially because StreamCast marketed itself to Napster users at a particularly important juncture--while Napster was in imminent legal jeopardy. End-user infringement exponentially increased, evidencing that StreamCast’s express and implied messages of promotion were received, absorbed, and responded to by the market. Or as more recently stated by the Ninth Circuit:

The software systems in ... Grokster were engineered, disseminated, and promoted explicitly for the purpose of facilitating piracy of copyrighted music and reducing legitimate sales of such music to that extent. Most ... users understood this and primarily used those systems to purloin copyrighted music. Further, the ... operators explicitly

1 targeted then-current users of the Napster program by sending them ads
 2 for its OpenNap program.

3 Visa Int'l Serv. Ass'n, 494 F.3d at 801. StreamCast's revenues skyrocketed
 4 as a result. Furthermore, StreamCast could not reasonably claim ignorance of
 the infringements perpetrated by Morpheus endusers. Grokster, 454
 F.Supp.2d at 992.

5 StreamCast has etched its niche in the market for infringement. Under
 6 the facts of this case, and the doctrinal point raised by Justice Souter, neither
 7 the simple passage of time nor the entry of judgment in this case can remedy
 StreamCast's past promotion as the "next Napster." The fact that a permanent
 8 injunction is imposed also does not leave Morpheus magically reborn as a
 product safe for unfiltered distribution under Sony.

9 As stated by Justice Scalia to StreamCast's counsel at oral argument, "the
 10 point is that those past acts [of encouragement] are what have developed your
 client's current clientele." Oral Argument Transcript at 29.

11 . . .
 12 StreamCast is not being "punished" for its past actions; rather,
 StreamCast's past activity is relevant to what future actions constitute
 13 inducement going forward.

14 An unfiltered Morpheus, which StreamCast intends to distribute if provided
 the opportunity, necessarily capitalizes on and remains inexorably linked to
 15 its historical efforts to promote infringement. The bell simply cannot be
 unrung. Accordingly, Morpheus's connection to the past promotion of
 16 infringement means that StreamCast's continued distribution of Morpheus
 alone constitutes inducement. This Court is empowered to regulate Morpheus
 17 under 17 U.S.C. § 502(a) in order to prevent this distribution from causing
 future harm to Plaintiffs' rights.

18 Grokster V, 518 F. Supp. 2d at 1233-35.

19 **D. Public Interest**

20 Finally, the Court agrees that the public interest will be served with a
 permanent injunction, since it will protect Plaintiffs' copyrights against increased
 21 and unrestrained infringement. Id. at 1222. Although Defendants argue that the
 22 BitTorrent "ecosystem" would be harmed by the present injunction, Defendants
 have not introduced any evidence to show the harmful "wider implications" of this
 23 injunction, nor have they shown that further discovery is warranted because the
 24 relevant evidence is exclusively within Plaintiffs' possession. (See Opp. at 15-17.)
 25 In addition, this injunction is aimed solely at *Defendants'* unlawful use of BitTorrent
 26

1 and similar technology, not at *third parties*' lawful use of BitTorrent and similar
 2 technology. The public interest will not be harmed by the injunction.

3 **E. Summary**

4 The Court thus finds that the four part eBay test favors the imposition of a
 5 permanent injunction to restrain Defendants' infringement. In its discretion, the
 6 Court deems it appropriate for a permanent injunction to issue.

7 In issuing the injunction, the Court is cognizant that "[t]he fact that absolutely
 8 perfect compliance is unattainable does not of itself preclude an injunction."

9 Withrow v. Concannon, 942 F.2d 1385, 1388 (9th Cir. 1991). "If a violating party
 10 has taken 'all reasonable steps' to comply with the court order, technical or
 11 inadvert[e]nt violations of the order will not support a finding of civil contempt."
 12 Gen. Signal Corp. v. Donallco, Inc., 787 F.2d 1376, 1379 (9th Cir. 1986) (citation
 13 omitted). Ultimately, Defendants have the option — and the burden — of deciding
 14 how they will comply with the following injunction. Triad Systems Corp. v.
 15 Southeastern Exp. Co., 64 F.3d 1330, 1337 (9th Cir. 1995) ("Putting this burden on
 16 Southeastern is appropriate because Southeastern is the infringer."), *overruled on*
 17 *other grounds by Gonzales v. Texaco Inc.*, 344 Fed. Appx. 304, 306 (9th Cir. 2009).

18 **III. INJUNCTION**

19 It is therefore ORDERED, ADJUDGED, and DECREED that:

20 1. For the purposes of this Permanent Injunction, the following definitions shall
 21 apply:

22 (a) "Defendants" shall mean Gary Fung and Isohunt Web Technologies,
 23 Inc., whether acting jointly or individually.

24 (b) "Isohunt System" shall mean the websites www.isohunt.com,
 25 www.podropolis.com, www.torrentbox.com, and www.ed2k-it.com, and
 26 shall further include any servers, trackers, software, and electronic data that
 27 make up or support such websites.

(c) “Comparable System” shall mean any website, system or software that provides users access to Plaintiffs’ Copyrighted Works, using BitTorrent or any peer-to-peer or other file-sharing or content delivery technology.

(d) “Copyrighted Works” shall mean each of those works, or portions thereof, whether now in existence or later created, in which any Plaintiff (or parent, subsidiary or affiliate of any Plaintiff), at the time of Defendants’ conduct in question, owns or controls a valid and subsisting exclusive right under the United States Copyright Act, 17 U.S.C. §§ 101 et seq., and which Plaintiffs have identified to Defendants by the title of the work.

(e) “Dot-torrent or similar files” shall mean dot-torrent files, magnet links, hash links, or other functionally similar files, links or identifiers.

(f) “Infringement-Related Terms” shall mean:

- (i) terms that refer to the titles or commonly understood names of Plaintiffs' Copyrighted Works (for example, the full title or common name of a television series);
- (ii) the following terms: "warez," "Axxo," "Jaybob," "DVD Rips," "Cam," "Telesync," "Telecine," "Screener," "PPV," or "R5";
- (iii) Plaintiffs may request that this Court modify (ii) above to include additional terms upon competent proof that such terms should be included in Paragraph 1(f)(ii).

2. Subject to the terms of Paragraph 5 below, Defendants shall be permanently enjoined from knowingly engaging in any of the following activities in connection with the Isohunt System or any Comparable System:

(a) hosting, indexing, linking to, or otherwise providing access to any Dot-torrent or similar files that correspond, point or lead to any of the Copyrighted Works;

- (b) assisting with end-user reproductions or transmissions of any of the Copyrighted Works through a tracker server, or any other server or software that assists users in locating, identifying or obtaining files from other users offering any of the Copyrighted Works for transmission; or
- (c) hosting or providing access to any of the Copyrighted Works.

6 Defendants shall be in knowing violation of this paragraph if they fail to act in
7 response to the list of titles as set forth in Paragraph 5.1.

8 3. Defendants shall immediately and permanently be enjoined from knowingly
9 engaging in any activities having the object or effect of fostering infringement of
10 Plaintiffs' Copyrighted Works, including without limitation, by engaging in any of
11 the following activities:

- (a) advertising or promoting access to or the availability of Plaintiffs' Copyrighted Works;
- (b) encouraging or soliciting users to reproduce or distribute Plaintiffs' Copyrighted Works;
- (c) encouraging or soliciting users to upload, post or index any Dot-torrent or similar files that correspond, point or lead to any of the Copyrighted Works;
- (d) encouraging or soliciting users to link to copies of Plaintiffs' Copyrighted Works;
- (e) providing technical assistance or support services to users engaged in infringement of, or seeking to infringe, Plaintiffs' Copyrighted Works;
- (f) creating, maintaining, highlighting or otherwise providing access to lists of "top" downloads of, or search terms for, Dot-torrent or similar files that include, refer to or signal the availability of Plaintiffs' Copyrighted Works;
- (g) including Infringement-Related Terms in metadata for any webpages;

- (h) creating, maintaining or providing access to browsable website categories of Dot-torrent or similar files using or based on Infringement-Related Terms;
- (i) organizing, harvesting or categorizing Dot-torrent or similar files using or based on Infringement-Related Terms;
- (j) engaging in any of the following activities with regard to the “Sites” defined below:
 - (i) using the names of any of the Sites in meta tags on any web pages;
 - (ii) bidding on, purchasing or using the names of any of the Sites as keywords in any advertising campaigns;
 - (iii) placing advertisements on any of the Sites; and
 - (iv) advertising by referring to any of the Sites by name.

For purpose of this provision, “Sites” shall mean: The Pirate Bay, Torrentspy, Aimster, Kazaa, Grokster, Morpheus, Newzbin, BT Junkie, Torrentreactor.net, kat.ph, torrents.net, SurftheChannel.com, Kino.to, Movie2k.to, and/or Dl4all.com.

(v) Plaintiffs may request that this Court modify the injunction to include additional websites upon competent proof that such websites should be added to Paragraph 3(j).

- (k) transferring or redirecting users of the Isohunt System to any other service that, directly or indirectly, provides access to unauthorized copies of Plaintiffs' Copyrighted Works;
- (l) indexing or providing access to Dot-torrent or similar files harvested or collected from the following sites or services: The Pirate Bay, Torrentspy, BT Junkie, Torrentreactor.net, kat.ph or torrents.net;

(i) Plaintiffs may request that this Court modify the injunction to include additional source websites upon competent proof that such websites should be added to Paragraph 3(l).

(m) soliciting revenue from third party advertisers or advertising brokers based on (or by referring to or highlighting) the availability of Plaintiff's Copyrighted Works.

7 4. The terms of Paragraphs 2 and 3 of this Permanent Injunction shall not apply
8 to any Copyrighted Work for which Defendants have obtained express written
9 authorization or license for the use being made of such Copyrighted Work from
10 each Plaintiff that owns or controls the rights to such Copyrighted Work, provided
11 such authorization or license is in force and valid at the time of Defendants' use of
12 the Copyrighted Work.

13 5. Defendants shall not be in violation of this Permanent Injunction as to
14 Copyrighted Works that Plaintiffs, or representatives of Plaintiffs, have not (a)
15 identified to Defendants by title of the work, and (b) represented to Defendants that,
16 based on a reasonable review and good faith belief, a Plaintiff (or a parent,
17 subsidiary or affiliate of a Plaintiff) owns or controls a valid and subsisting
18 exclusive right under the United States Copyright Act, 17 U.S.C. §§ 101 et seq. in
19 the work (a “list of titles”).

(a) Plaintiffs shall be permitted to supplement and update their list of titles without restriction, including without limitation with works soon-to-be but not yet released to the public.

(b) Plaintiffs shall provide Defendants with the list of titles in electronic form.

(c) Defendants shall promptly provide Plaintiffs with a valid email address to use for the lists of titles, and Defendants shall immediately notify Plaintiffs in writing of any change in such email address. A list of titles shall be

deemed delivered when sent to the most current email provided by Defendants.

(d) With regard to the initial list of titles provided by Plaintiffs pursuant to this Permanent Injunction, Defendants shall be required to comply with the terms of Paragraph 2 above no later than 14 calendar days from the date Plaintiffs deliver the initial list of titles.

(e) For all subsequent lists of titles, Defendants shall be required to comply with the terms of Paragraph 2 above no later than 24 hours from the time Plaintiffs deliver the list of titles.

(f) In the event a commercial vendor or other third party becomes able to provide Defendants with a reliable list of Plaintiffs' Copyrighted Works, Plaintiffs may apply to the Court for an order modifying this Permanent Injunction to relieve them of the obligation of providing Defendants with lists of titles, even if there is a cost to Defendants of securing the lists of titles from the commercial vendor or third party.

16 6. Prior to Defendants entering into any agreement or transaction whatsoever to
17 sell, lease, license, assign, convey, give away, distribute, loan, barter, hypothecate,
18 encumber, pledge or otherwise transfer, whether or not for consideration or
19 compensation, any part of the software, source code, data files, other technology,
20 domain names, trademarks, brands, or Dot-torrent or similar files used in connection
21 with the Isohunt System or any Comparable System (a “Transfer of Isohunt-Related
22 Assets”), Defendants shall require, as a condition of any such transaction, that the
23 transferee:

- (a) submit to the Court's jurisdiction and venue;
- (b) agree to be bound by the terms herein; and
- (c) apply to the Court for an order adding it as a party to this Permanent Injunction.

1 Defendants shall not permit any Transfer of Isohunt-Related Assets to close until the
 2 Court has entered such an order. Defendants further shall not engage in a Transfer
 3 of Isohunt-Related Assets with or to any person whom Defendants know to be
 4 engaged in, or intending to be engaged in, conduct that would violate the terms of
 5 Paragraphs 2 or 3 above.

6 7. This Permanent Injunction shall bind Gary Fung, individually, and Isohunt
 7 Web Technologies, Inc., and their officers, agents, servants, employees, attorneys,
 8 successors, and assigns, and all those in active concert or participation with any of
 9 them, who receive actual notice of this Permanent Injunction by personal service or
 10 otherwise. Defendants shall provide a copy of this Permanent Injunction to each of
 11 their respective officers, agents, servants, employees, attorneys, principals,
 12 shareholders, current and future administrators or moderators for the Isohunt System
 13 (or Comparable System) or any online forums associated with the Isohunt System
 14 (or Comparable System), and any domain name registries or registrars responsible
 15 for any domain names used in connection with the Isohunt System (or Comparable
 16 System).

17 8. Nothing in this Permanent Injunction shall limit the right of Plaintiffs to seek
 18 to recover damages under 17 U.S.C. § 504, or costs, including attorneys' fees, under
 19 17 U.S.C. § 505.

20 9. For purposes of clarity, as the Court has personal jurisdiction over Defendants
 21 and has concluded that the conduct of Defendants induces infringement of
 22 Plaintiffs' Copyrighted Works in the United States under the copyright laws of the
 23 United States, this Permanent Injunction enjoins the conduct of Defendants
 24 wherever they may be found, including without limitation in Canada.

25 10. The Court further clarifies that this injunction covers any acts of direct
 26 infringement, as defined in 17 U.S.C. § 106, that take place in the United States. To
 27 the extent that an act of reproducing, copying, distributing, performing, or

28

1 displaying takes place in the United States, it may violate 17 U.S.C. § 106, subject
 2 to the generally applicable requirements and defenses of the Copyright Act. As
 3 explained in the Court's December 23, 2009 Order, "United States copyright law
 4 does not require that both parties be located in the United States. Rather, the acts of
 5 uploading and downloading are each independent grounds of copyright infringement
 6 liability." Summary Judgment Order at 19. Each download or upload of Plaintiffs'
 7 copyrighted material violates Plaintiffs' copyrights if even a single United States-
 8 based user is involved in the "swarm" process of distributing, transmitting, or
 9 receiving a portion of a computer file containing Plaintiffs' copyrighted content.

10 11. Violation of this Permanent Injunction shall expose the Defendants, and all
 11 others properly bound by it, to all applicable penalties, including for contempt of
 12 Court.

13 12. The Court shall maintain jurisdiction over this action for the purposes of
 14 enforcing this Permanent Injunction and for amending the injunction in response to
 15 future changes in the law or factual circumstances. See Grokster V., 518 F. Supp. 2d
 16 at 1239-40 (collecting cases).

17 13. Gary Fung, individually, shall not be deemed to be in violation of this
 18 injunction solely as a result of his being a bona fide employee or independent
 19 contractor of a third party entity that may be engaged in acts that violate this
 20 injunction or whose services might be used by third parties to engage in
 21 infringement, provided that Mr. Fung does not personally direct or participate in
 22 conduct that violates this injunction.

23

24 IT IS SO ORDERED.

25

26 DATED: August 5, 2013

27



28
 THE HON. STEPHEN V. WILSON
 UNITED STATES DISTRICT JUDGE